sons without violating the statute. There can be no public policy which contravenes the positive language of a statute."[15] Thus it can be seen that the cases in this country divide on this question of public policy. Those cases following *Riggs* v. *Palmer*[16] recognize the right of the courts to declare a thing to be against the public policy of the State. The other cases hold that, though this may be so in certain cases, nevertheless where the legislature has once dealt with a subject, as when as here it has declared where the property of an intestate shall go and what the punishment for murder shall be, it is not its intention that the courts shall further develop the subject and make an exception when the deceased's heir shall take and add further punishment to murder by denying the murderer that property which, as heir of the deceased, would naturally come to him. In the principal case the statutes of Illinois provide that the real and personal estates of any person dying shall descend to his children and their descendants.[17] This, the court held, in line with authorities *supra,*[18] expressed the intent of the legislature and excluded any implied condition such as that if the inheritance came to one who had feloniously caused the decedent's death, the statute should not apply.

The courts have not always laid stress upon the question of the intent manifested by the murder. Perhaps it is presumed in most cases that if a man murders a member of his family it is for the purpose of inheriting his or her property. This being usually the case, those courts which allow the property to devolve upon the murderer do not hold otherwise merely because it is expressly shown that the murder was committed for the very purpose of inheriting the decedent's property.[19]

H. I.

DIVORCE—EXTRATERRITORIAL EFFECT OF A DECREE OF DIVORCE —JURISDICTION—The demand for uniform divorce legislation would seem to be justified when one considers the great conflict among the decisions and the complexity of the legal question involved. Because of the diverse grounds of divorce in different jurisdictions, the different modes of procedure required to secure a decree, the different attitudes taken toward the question by the courts of different jurisdictions and the resulting confusion in the cases, there is a haze of uncertainty about the whole question that would clearly be remedied by uniformity of procedure and determination.

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[15] At p. 208.

[16] *Supra,* n. 8.

[17] Hurd's Rev. St. 1913, c. 39.

[18] N. 11.

[19] 170 Pa. 203, 72 Kan. 533, 20 Okl. 687, *supra,* n. 11.

The main reason for the confusion that now exists seems to be the complex legal nature of the marriage relation. This relation involves not only the personal rights of the parties to the marriage toward each other, but also the marriage relation or *status* itself. In a suit for divorce, although the personal rights of the parties are affected, the subject matter of the litigation is the marriage *status*. By the better view, a suit for divorce is an action *quasi in rem*.[1] The *res* is the marriage *status*. The jurisdiction of a court over such *status* depends upon its *situs*. The *situs* of the marriage *status* depends upon the domicile of the parties. Ordinarily the domicile of a wife is that of her husband. But, as we shall see, under some circumstances a wife may have a domicile separate from that of her husband. It is because of the complex situations that may arise out of the foregoing legal principles that we find so many conflicting views and decisions as to the effect of a decree of divorce.

As to the intra-territorial effect of a decree of divorce there is no question. The principle that each State has the sovereign power to determine the *status* of all persons within its boundaries, either permanently or temporarily, subject only to constitutional restrictions, is well established. But the extra-territorial effect of a decree of divorce would seem to depend upon whether the court granting it has such jurisdiction of the marriage *status*, the *res* of the action, that other States will recognize it as a valid judgment binding everywhere, provided, of course, that it is binding where made. The question may arise in three different situations.

1. Both parties to the marriage sought to be dissolved may be domiciled within the jurisdiction of the court granting the decree. In such case the court has complete jurisdiction of both the parties and the *res* and therefore the decree, valid in the State where made, will be valid and binding everywhere.[2] This is true even though the parties are not actually present at the time of the decree, so long as they have their domicile there.[3]

2. Where neither party is domiciled in the State granting the divorce it seems equally clear that the decree will have no extra-territorial effect.[4] Some courts modify this rule to the extent of holding that voluntary submission by the parties to the decision of a court estops them from afterward denying the court's jurisdiction elsewhere.[5]

3. It is where only one of the parties is domiciled in the State of divorce that great difficulty arises. In such case the divorcing

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[1] Minor on Conflict of Laws, §87.

[2] Barber v. Root, 10 Mass. 260 (1813); Hunt v. Hunt, 72 N. Y. 217 (1878).

[3] Loker v. Gerald, 157 Mass. 42 (1892).

[4] Watkins v. Watkins, 125 Ind. 163 (1890); Reed v. Reed, 52 Mich. 117 (1883); Neff v. Beauchamp, 74 Ia. 92 (1887); Streitwolf v. Streitwolf, 181 U. S. 179 (1900).

[5] Ellis v. Ellis, 55 Minn. 401 (1893); Ellis v. White, 61 Ia. 644 (1883).

court has partial, but not complete, jurisdiction of the marriage *status*. Yet, owing to the nature of the marriage relation, no decree of divorce can be made affecting the *status* of one party without equally affecting that of the other. The question then arises, under such circumstances, what is necessary to give the court granting the divorce such jurisdiction as will induce the courts of other jurisdictions to recognize its judgment as valid and binding upon them, it being an established rule of private international law that a decree of a court having jurisdiction of the subject matter and of the parties, if valid where made, is valid and binding everywhere,[6] provided it be not against the public policy or morality of the State asked to recognize it.[6a] There is further involved, as between the States of the Union, the "full faith and credit" clause of the Federal Constitution, which requires that a decree rendered by a court of competent jurisdiction, unless void where rendered, is conclusive in every other State as to the matters decided. But this provision is qualified in that it does not prevent an inquiry into the competency of the jurisdiction of the court granting the decree.[7] If the court has not competent jurisdiction, its judgment need not be given "full faith and credit".[8]

In the recent case of *Gildersleeve* v. *Gildersleeve*[9] the parties were domiciled in Connecticut. The husband left the wife and went to South Dakota, where he resided for more than a year. During that time he instituted proceedings for divorce in that State, personal service in such action being made upon the wife in Connecticut. Although there was evidence from which the court might have found that the plaintiff took up his residence in South Dakota for the mere purpose of securing the divorce, the court held it incumbent upon them, as an act of interstate comity, to accord to the South Dakota decree full recognition, there being no ground of public policy or morality involved to induce a different course. This decision is in accord with the general rule that a foreign divorce granted to one party by a court having jurisdiction of the subject matter and of the parties is binding on the other party.[10] As above stated, the question then resolves itself into one of determining what is necessary to give the court granting the decree competent

[6] Ditson v. Ditson, 4 R. I. 87 (1856); Coddington v. Coddington, 10 Ab. Prac. 450 (N. Y. 1860); Cheever v. Wilson, 9 Wall. 108 (1869); Felt v. Felt, 57 N. J. Eq. 101 (1898).

[6a] Kinney v. Com., 30 Gratt. 858 (Va. 1878); Stull's Estate, 183 Pa. 625 (1898).

[7] Cheever v. Wilson, *supra*, n. 6; Cummington v. Belchertown, 149 Mass. 223 (1889); Reed v. Reed, 52 Mich. 117 (1883); Watkins v. Watkins, *supra*, n. 4.

[8] Streitwolf v. Streitwolf, *supra*, n. 4.

[9] 92 Atl. Rep. 684 (Conn. 1914).

[10] Ditson v. Ditson, *supra*, n. 6; Coddington v. Coddington, *supra*, n. 6; Cheever v. Wilson, *supra*, n. 6; Felt v. Felt, *supra*, n. 6.

jurisdiction. It is obvious that in order to bring suit, the party seeking the divorce must be subject to the jurisdiction of the court to which he looks for relief. It would seem that if the plaintiff is *bona fide* domiciled in the State of the *forum,* residence of the defendant therein is not necessary to confer jurisdiction on the court to dissolve the marriage.[11] But it seems equally clear that if the plaintiff has taken up a residence in the State of the *forum* for the sole purpose of obtaining a divorce, and with no intention of remaining, it is not sufficient to give the court jurisdiction over the plaintiff.[12] Especially is this true where the cause of divorce set up is one not recognized by the law of the domicile he has left.[13] While it is the general rule that the domicile of a wife is that of her husband, it is well established that a married woman may acquire a domicile separate from that of her husband when it is necessary for her to do so because of his conduct.[14] So also, if the husband deserts his wife and removes to a foreign State, the wife may remain and retain her domicile.[15]

It being clear in a specified case that the court has jurisdiction of the plaintiff, the question remains as to what is necessary to confer upon it jurisdiction over the defendant sufficient to make its decree binding extra-territorially. The broad rule would seem to be that jurisdiction of the person of the defendant may be acquired by service of process in any constitutional mode recognized by the statutes of the State granting the divorce. Thus, by many of the decisions, constructive service of process on a non-resident defendant is sufficient to give extra-territorial effect to the decree.[16] Some States qualify the broad rule as stated.[17] Still others deny it *in*

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[11] Loker v. Gerald, *supra,* n. 3; Ditson v. Ditson, *supra,* n. 6; Cheever v. Wilson, *supra,* n. 6; Felt v. Felt, *supra,* n. 6.

[12] Hanover v. Turner, 14 Mass. 227 (1817); Gettys v. Gettys, 3 Lea. 260 (Tenn. 1879); Streitwolf v. Streitwolf, 58 N. J. Eq. 563 (1899); s. c. on appeal, 181 U. S. 179 (1901); Dunham v. Dunham, 162 Ill. 589 (1896).

[13] Cummington v. Belchertown, *supra,* n. 7; Sewall v. Sewall, 122 Mass. 156 (1877).

[14] Smith v. Smith, 43 La. Ann. 1140 (1891); Atherton v. Atherton, 155 N. Y. 129 (1893); Cheever v. Wilson, *supra,* n. 6.

[15] Colvin v. Reed, 55 Pa. 375 (1867); Campbell v. Campbell, 90 Hun. 233 (N. Y. 1895); Sewall v. Sewall, *supra,* n. 13.

[16] Ditson v. Ditson, *supra,* n. 6; Kline v. Kline, 57 Ia. 386 (1881); Thurston v. Thurston, 58 Minn. 265 (1894); Thompson v. Thompson, 91 Ala. 591 (1890); Hibbish v. Hittle, 145 Ind. 59 (1895); Rogers v. Rogers, 56 Kans. 438 (1895). Some of these decisions hold that while the decree operates as a binding and valid dissolution of the marriage *status,* it does not extra-territorially affect the property rights of the defendant, or the *status* of children of the marriage: Thurston v. Thurston, *supra;* Rogers v. Rogers, *supra;* Kline v. Kline, *supra.*

[17] Van Orsdal v. Van Orsdal, 67 Ia. 35 (1885); Smith v. Smith, *supra,* n. 14. These decisions recognized decrees on constructive notice granted in other states with similar legislation.

toto.[18] Such a decree, however, is not entitled to recognition under the "full faith and credit" clause of the Federal Constitution.[19] Another, and, it is submitted, more reasonable rule requires some kind of personal service on the non-resident defendant.[20] Such a rule prevents the defendant from the granting of a decree against him of which he or she is entirely ignorant, or at least requires that the plaintiff show *bona fides* by attempting personal service at the place the defendant was last known to be.[21] The principal case is in accord with this rule, which is just and equitable to all concerned. In only one jurisdiction does the rule seem to be more strict than as just stated. In New York even personal service on a non-resident defendant has been held not to confer jurisdiction on the foreign court so as to entitle its decree to recognition.[22] It would seem, however, that sufficient protection is given to the rights of the defendant without requiring him or her to be an actual resident of the State of the *forum,* provided personal service is made. Of course, a general appearance entered by a non-resident defendant, either in person or by attorney, gives the court jurisdiction of such defendant.[23] And a decree upon such appearance by a defendant is entitled to full faith and credit under the Federal Constitution.[24]

R. M. G.

TORTS—PROXIMATE AND REMOTE CAUSE—INTERVENING ACTS OF A THIRD PERSON—The question of how far a wrongdoer should be held responsible for the results of his wrongful act when there has been some wrongful or negligent interference by a third person between the original wrong and the resulting injury, is from its very nature a complicated one. It is even more so today than formerly, for so far-reaching and varied in a highly developed civilization are the results of what might seem to be the least important act, that every wrong drags after it a chain of more or less disastrous con-

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[18] Harris v. Harris, 115 N. C. 587 (1894); McCreery v. Davis, 44 S. C. 195 (1894); Winston v. Winston, 165 N. Y. 553 (1901); Zerfas' Appeal, 135 Pa. 522 (1890); Hein's Estate, 22 Pa. Super. Ct. 31 (1903).

[19] Haddock v. Haddock, 201 U. S. 562 (1906). *Cf.* Atherton v. Atherton, 181 U. S. 155 (1901), where the wife deserted and the husband sued for divorce, the only service on the wife being an attempted service through the mails, which failed. It was held that the wife had never acquired a new domicile, and the decree was therefore binding extra-territorially under the full faith and credit clause of the Federal Constitution.

[20] Felt v. Felt, *supra,* n. 6; Loker v. Gerald, *supra,* n. 3; Harding v. Allen, 9 Me. 140 (1832).

[21] Atherton v. Atherton, *supra,* n. 19.

[22] Williams v. Williams, 130 N. Y. 193 (1891); Matter of Kimball, 155 N. Y. 62 (1898).

[23] Cheever v. Wilson, *supra,* n. 6; Arrington v. Arrington, 102 N. C. 491 (1889).

[24] Cheever v. Wilson, *supra,* n. 6; Lynde v. Lynde, 162 N. Y. 405 (1900).